

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Entergy Services, Inc.

Docket No. ER04-663-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued November 2, 2004)

1. In this order, we accept for filing Entergy Arkansas, Inc.'s (Entergy Arkansas) 2004 Wholesale Formula Rate Update (2004 Update), suspend it for a nominal period, to become effective March 1, 2004, subject to refund. We also establish hearing and settlement judge procedures. This action benefits customers because it provides the parties with a forum in which to resolve their disputes over Entergy Arkansas' 2004 Update.

Background

2. On March 18, 2004, Entergy Services, Inc. (Entergy Services) filed the 2004 Update on behalf of Entergy Arkansas to redetermine the formula rate charges and the Transmission Loss Factor in accordance with various agreements and settlements it has with numerous customers, as well as the Settlement Agreement in the 1998 Formula Rate Update proceeding (1998 Settlement).¹

¹The 2004 Update is filed in accordance with: (1) the Power Coordination, Interchange and Transmission Service Agreements (PCITA) between Entergy Arkansas and the Cities of Conway, West Memphis and Osceola, Arkansas (Arkansas Cities); the Cities of Campbell and Thayer, Missouri (Missouri Cities); and the Arkansas Electric Cooperative Corporation (AECC); (2) the Transmission Service Agreement (TSA) between Entergy Arkansas and the City of Hope, Arkansas (Hope); (3) the TSA between Entergy Arkansas and the Louisiana Energy & Power Authority (LEPA); (4) the Wholesale Power Service Agreement (WPSA) between Entergy Arkansas and the City of Prescott, Arkansas (Prescott); and (5) the WPSA between Entergy Arkansas and the

Notice of Filings and Responsive Pleadings

3. Notice of the filing was published in the *Federal Register*, 69 Fed. Reg. 16,246 (2004), with comments, interventions and protests due on or before April 8, 2004. Subsequently, Entergy Services permitted the parties to file comments up to and including September 10, 2004. Arkansas Cities and Cooperative² filed a timely motion to intervene and protest. It raises a variety of issues and requests that the filing be set for hearing. Among other things, it expresses concern that Entergy Arkansas has not adequately supported the formula rate redetermination. It also expresses concern about the impact of certain other Entergy cases on the instant proceeding, including the Purchase Power Agreements at issue in Docket No. ER03-583-000³ (PPA case), the treatment of incremental rates under review in Docket No. ER04-886-000,⁴ and the current market power issues in Docket No. ER91-569-009.⁵ Finally, it states that Entergy Services has refused to provide several items of information it needs to evaluate the justness and reasonableness of the proposed rates. Arkansas Electric Cooperative Corporation filed a timely motion to intervene with comments and a protest, expressing concern about the treatment of incremental rates. It also expresses concern about Entergy Services' lack of support for its proposed rates, and requests that the matter be set for hearing.

4. Entergy Services filed an answer on September 27, 2004. On October 12, 2004, Arkansas Cities and Cooperatives filed an answer to Entergy Services answer. Also on October 12, 2004, Arkansas Electric Cooperative Corporation filed an answer to Entergy Services' answer.

Farmers Electric Cooperative Corporation (Farmers). Additionally, the filing redetermines the distribution rate charged to the City of North Little Rock pursuant to the Network Integration Transmission Service Agreement.

² Arkansas Cities and Cooperatives consists of the Cities of Osceola, and Prescott, Arkansas; the Conway Corporation; the West Memphis Utilities Commission; and Farmer's Electric Cooperative Corporation.

³ *Entergy Services, Inc. and EWO Marketing, LP*, 103 FERC ¶ 61,256 (2003).

⁴ *Entergy Services, Inc.*, 108 FERC ¶ 61,252 (2004).

⁵ *AEP Power Marketing, Inc., et al.*, 97 FERC ¶ 61,219 (2001).

Discussion

Procedural Matters

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to protests and to answers unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed in this proceeding and will, therefore, reject them.

Hearing Procedures

6. Entergy Arkansas' 2004 Update raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

7. Our preliminary analysis indicates that the 2004 Update has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the 2004 Update for filing, suspend it for a nominal period, make it effective March 1, 2004,⁶ as requested, subject to refund, and set it for hearing and settlement judge procedures.

8. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced; with respect to the last such filing, the parties were successful in settling.⁷ To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge shall be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

⁶ See *Central Hudson Gas & Electric Corp., et al.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

⁷ On June 7, 2004, Entergy Services filed a Settlement Agreement in Docket Nos. ER03-599-000, *et al.* (2003 Update), and that settlement was approved by the Commission in an order issued September 16, 2004. *Entergy Services, Inc.*, 108 FERC ¶ 61,238 (2004).

⁸ 18 C.F.R. § 385.603 (2004).

otherwise the Chief Judge will select a judge for this purpose.⁹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The 2004 Update is hereby accepted for filing, suspended for a nominal period, to become effective March 1, 2004, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of the 2004 Update. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case

⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.